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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

No. 724

LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPENTERS, et al.,
Petitioners,

vs.

JOHNY E. McCARROLL, WILLIE J. McCARROLL and THOMAS L. HALL, a copartnership doing business as McCarroll & Hall Construction Co., also known as McCarroll & Hall,
Respondents.

PETITION FOR A WRIT OF CERTIORARI to the Supreme Court of the State of California.

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Table of Authorities Cited

Cases

	Pages
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to the Supreme Court of the
State of California.

Petitioners pray that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of California entered on September 13, 1957.

CITATIONS AND OPINIONS BELOW.

The order of the Superior Court of Los Angeles County of the State of California, a court of general jurisdiction, granting a preliminary injunction issued on March 24, 1955 and is printed in Appendix "A" hereto. The opinion of the District Court of Appeal of the State of California, Second District, Division One, is unreported but found in 146 A.C.A. 744 and is printed in Appendix "B" hereto. The opinion of the Supreme Court of the State of California is reported in 49 A.C. 47 and is printed in Appendix "C" hereto.

JURISDICTION.

The Judgment of the Supreme Court of the State of California was entered on September 13, 1957. Appendix "C", *infra.* A timely Petition for Rehearing was filed and denied on October 8, 1957. Remittitur was issued on October 14, 1957. The jurisdiction of this Court is invoked under 128 U.S.C. Section 1257 and, because of the importance of the jurisdictional questions presented, under the authority of ***Myers v. Bethlehem Corp.,*** 303 U.S. 41, which held that a decision of a lower court affirming the issuance of a preliminary injunction may be reviewed on certiorari where "there was an insuperable objection to the maintenance of the suit in point of jurisdiction and where it clearly appears that the decree was the result of an improvident exercise of judicial discretion." (At p. 52.)

STATUTES INVOLVED.

The statutory provisions involved are the Taft-Hartley Act (Labor-Management Relations Act, 1947, 29 U.S.C. 141 *et seq.*).

QUESTIONS PRESENTED.

1. May the state Court assert jurisdiction where an interstate employer seeks to enforce a collective bargaining agreement governed by Section 301 of the Taft-Hartley Act, 29 U.S.C. Section 185?

2. If the answer to (1) is in the affirmative, may the state Court apply state rather than federal substantive law to resolve the issues presented by the controversy?

3. If the answer to (1) and (2) is in the affirmative, may the state Court grant relief which is different and more stringent than would be available or permissible in federal Courts?

STATEMENT OF THE CASE.

Plaintiffs are engaged in the business of sub-contractors to general contractors in the building and construction industry and as such were parties to a collective bargaining agreement to which petitioners were also a party. This agreement was known as the "BCA-AFL Master Labor Agreement."

Among other provisions, this agreement provided that employers who desired to procure workmen were to contact a particular local union in the area where work was to be performed and that the latter was obligated to furnish competent and qualified workmen by the use of a written referral system. The employer retained the right to secure employees from other sources if his requests were not filled within 48 hours and was permitted to transfer up to 10% of his current requirements to projects in the jurisdiction of another local union. The agreement also contained a provision which required the submission of disputes arising thereunder to a specified grievance procedure ending in arbitration.

Plaintiffs brought an action on June 1, 1954 in the Superior Court of Los Angeles County, a Court of general jurisdiction, seeking specific performance, injunctive relief and damages for an alleged violation of said agreement.

The plaintiffs alleged that the defendants furnished unskilled and incompetent workmen and that they refused to permit the plaintiffs to transfer workmen from the jurisdiction of one local to that of another in excess of the contractual 10% figure and that they refused to permit the transfer of workmen from the jurisdiction of one local union to that of another in Los Angeles County. The complaint further alleged that the defendants did commence to picket and strike the projects of the plaintiffs after threatening economic action against plaintiffs if they transferred more men than the 10% figure and if they obtained workmen from other sources.

The trial Court found that it had jurisdiction and issued the order for preliminary injunction and preliminary injunction, Appendix "A". The District Court of Appeal of the State of California, Second District, Division One, Appendix "B", in a unanimous opinion rendered on December 10, 1956, reversed the trial Court holding that the state Courts are not vested with jurisdiction in cases involving breaches of collective bargaining agreements and unfair labor practices and held that the National Labor Relations Board is clothed with exclusive jurisdiction to determine whether conduct is either protected or prohibited activity under the Act.

Plaintiffs thereupon petitioned the California Supreme Court for a hearing which was granted and on September 13, 1957 that Court rendered an opinion which affirmed the order of the Superior Court of Los Angeles County, granting a preliminary injunction. The opinion of the California Supreme Court was concurred in by four justices, two justices concurred in the judgment, and Justice Carter submitted a dissenting opinion. That Court held that under Section 301, state Courts have concurrent jurisdiction with federal Courts even though federal substantive law governs such actions. The California Supreme Court further held that since federal substantive law was not known, it was assumed to be no different from state law and proceeded to hold that in the application of such substantive law, the state Court could grant injunctive relief which could not be obtained if the action had been brought in the federal Courts.

REASONS FOR GRANTING PETITION.

1. The opinion of the California Supreme Court in this case is contrary to the recent decisions of this Court in *Textile Workers Union v. Lincoln Mills of Alabama*, 353 U.S. 448, *General Electric Company v. United Electrical, Radio and Machine Workers*, 353 U.S. 547, and *Goodall-Sanford, Inc. v. United Textile Workers*, 353 U.S. 550.

The significant holding of the *Lincoln Mills* case was that under Section 301, there was an expression of a federal policy that collective bargaining agreements affecting interstate commerce should be enforced by the federal Courts as the best method to attain industrial peace. Certainly, the fact that *federal Courts* are deemed to be the agencies which should enforce such agreements leads to the conclusion that suits under Section 301 are within the exclusive jurisdiction of federal judicial and administrative agencies rather than with the state Courts.

This contention is supported by the holding of this Court in the same *Lincoln Mills* case to the effect that the law which was to be applied in enforcing collective bargaining agreements was to be fashioned from the policy of the "national labor Courts". (At p. 457.) How can it be said that the state Courts could exercise jurisdiction in such cases when the law to be applied could not be the law of the state? Indeed, since federal interpretation of such federal law is to govern, the state Courts are in no position to assert jurisdiction for this Court has made it clear that the state Courts are not the proper tribunals for such a determination or interpretation.

It is true that under the *Lincoln Mills* case, state law may be resorted to by the federal Courts in certain cases but only if it will promote and effectuate the federal policy with regard to labor-management relations. Thus, when state laws are resorted to by the federal Courts they would become absorbed in a body of federal laws and would not provide a source of private rights. In this connection, it was noted that historically the federal Courts have been called upon to fashion federal law where federal rights are concerned. Obviously, then, the substantive law to be fashioned in the context of Section 301 actions may be fashioned only by federal and not by state Courts. If the case were otherwise, there would have been no need to call upon federal Courts to fashion "federal law" and there would have been no need to emphasize the fact that federal and not state rights were involved in such actions.

This principle that the federal courts have exclusive jurisdiction in suits brought under Section 301 has been recognized since the decision of *Fay v. American Cystoscope Makers, Inc.* (D.C., S.D. N.Y.; 1951), 98 F. Supp. 276. That case held that "in the light of the determination that the section [301] creates a new, federal, substantive right . . . it seems clear that Congress preempted the field of this area." (At p. 279.)

The view of the *Fay* case with regard to preemption of jurisdiction as to suits brought under Section 301 is consistent with Congressional intent with regard to the Labor-Management Relations Act as subse-